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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF M.C. and S.C.,)
Minor Children, BETTY PARKER, Mother, and)
STEVEN CHRISTENER, Father,)
)
Appellants-Respondents,)
)
vs.)
)
ADAMS COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 01A02-0610-JV-932

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick Schurger, Judge
Cause Nos. 01C01-0506-JT-2 and 01C01-0603-JT-3

April 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Steven Christener appeals the termination of his parental rights to his two children, M.C. and S.C. He alleges the court abused its discretion when it declined to hear evidence about his sister's willingness to house the children until Christener's release from prison. Because the home study determined placement in her home was not appropriate for the children, Christener cannot demonstrate he was prejudiced by the exclusion of her testimony. Christener also claims the evidence does not support the judgment. However, in light of Christener's inability to modify his parenting behavior based on nearly two years of feedback he had received prior to his incarceration and the fact his earliest release date from prison is in the year 2015, we cannot say the court's decision to terminate his parental rights was clearly erroneous. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

In 2002, Christener began living with Betty Parker. Parker had a son D.C., who was born April 11, 2001. Christener was not D.C.'s biological or adoptive father. On April 15, 2003, Parker gave birth to Christener's daughter, M.C. For eleven months, most of which were prior to M.C.'s birth, Healthy Families had been providing Parker and Christener assistance with parenting and discipline techniques.

On March 8, 2004, just before he turned three years old, D.C. got into Parker's personal items and the chemicals for the fish tank. When Christener returned from work, Parker and Christener decided to punish D.C. At 5:00 p.m., they ordered D.C. to begin running around the room. If he stopped running, they struck him with a fly swatter. After two hours of running or being struck, Parker and Christener took D.C. to the room where they were going to put M.C. to bed and forced him to jump continuously. Each

time he stopped jumping, either Parker or Christener hit him with a wooden paddle. D.C. was forced to jump from 7:00 p.m. until 11:30 p.m. Throughout this entire ordeal, D.C. was wearing only underwear. Parker and Christener decided to use the wooden paddle, which was in fact a wooden shelf, because the fly swatter had been leaving marks on D.C.

The next day, when Parker noticed D.C. had blood in his urine, she took him to the hospital. D.C. had marks and bruises on his buttocks, arms, legs, penis, and stomach. In fact, the only place he did not have bruises was on his hands, which suggests he did not attempt to protect himself with his hands during the seven hours of abuse. One therapist opined D.C. did not defend himself with his hands because he had become so accustomed to being physically abused. Doctors determined D.C. had blood in his urine because his kidneys had been injured during the beating he received the night before. Parker admitted seeing Christener hit D.C. hard enough to bruise his kidneys. Doctors noted D.C. had genital warts, which suggested he also had been sexually abused.

D.C. remained in the hospital overnight and the Adams County Department of Child Services (“DCS”) placed him in foster care the next day. DCS also removed M.C. from Parker and Christener on March 9, 2004, and placed her in foster care. On July 28, 2004, the court declared M.C. a child in need of services (“CHINS”). The dispositional order required Christener to undergo a psychological evaluation; undergo assessments for anger management, parenting skills, and drug and alcohol abuse; complete any counseling suggested following the four evaluations and assessments; cooperate with

home-based services; maintain income and housing; attend visitation; and refrain from contacting Parker.

On November 29, 2004, Parker gave birth to Christener's son, S.C. The DCS took S.C. into custody, but permitted him to remain with Parker for one week. On December 6, 2004, S.C. was placed in the same foster home where M.C. was living.

For abusing D.C., Christener was convicted of Class B felony battery resulting in serious bodily injury and Class D felony aiding, inducing, or causing battery.¹ The court sentenced him to twenty years imprisonment. The parties estimate his earliest release date to be May 26, 2015.²

On June 16, 2005, the DCS filed a petition to terminate Parker and Christener's rights to M.C. In August of 2005, the court determined S.C. was a CHINS, and on March 10, 2006, DCS filed a petition to terminate Parker and Christener's rights to S.C. On July 18, 2006, the morning the fact-finding hearing on the petitions was to begin, Parker voluntarily terminated her parental rights. The court held a hearing over two days and then terminated Christener's rights in orders that provided the following pertinent findings and conclusions:³

¹ For her involvement in the abuse of D.C., Parker pled guilty to Class C felony battery resulting in serious bodily injury and received an eight-year sentence.

² It appears that date was obtained by giving Christener two days credit for each day served. If Christener does not remain in Credit Class I, he may not be eligible for release until much later. Alternatively, if Christener participates in activities, such as educational opportunities, for which he may receive additional credit against his sentence, then he may be released earlier than May of 2015.

³ We quote the order regarding M.C. However, the order regarding S.C. contains nearly identical findings and conclusions in paragraphs numbered 24 to 42 and 45 to 55. (*See* Supplemental App. at 12-15.) The only other differences in the quoted paragraphs between the two orders appear to be the substitution of S.C.'s name for M.C.'s name in appropriate locations, and vice versa.

FINDINGS OF FACT

* * * * *

23. Dr. John Musgrave, PhD., completed the initial assessment on Steven W. Christener. Dr. Musgrave performed a clinical interview, obtained developmental history, personality assessment, child abuse inventory and parenting stress assessment. Dr. Musgrave opined that Steven W. Christener had a substance abuse issue and had definite features of anti-social personality disorder. Dr. Musgrave believes because Steven Christener has no value for others [sic] rights, the children are at risk.

24. Christine O. Shestak is a licensed Mental Health Counselor who was retained by the Department of Child Services to assess the mental health of [D.C.] and provide therapy. Ms. Shestak determined that [D.C.] suffered from Post Traumatic Stress Disorder as a result of the physical abuse he received from Steven W. Christener and Betty A. Parker. The therapist also opined [D.C.] suffers from Reactive Attachment Disorder.

25. Ms. Shestak received all of [D.C.]'s medical records and the photographs of the injuries sustained by the child. She found that the only parts of the child's body that were not bruised were his hands indicating the child did not resist the physical abuse. She also noted the child had genital warts indicating possible sexual abuse.

26. Ms. Shestak opined that through her therapy with [D.C.] and meeting with Betty A. Parker and Steven W. Christener that [D.C.] simply accepted his physical punishment without resistance and, over time, became non-reactive to it. She was also confident [M.C.] had watched the abuse by Steven W. Christener and Betty A. Parker on [D.C.].

27. Ms. Shestak supported the Department of Child Services' recommendation of Termination of Parental Rights of Steven W. Christener for the reason that [M.C.] would be at a high risk of similar treatment by Steven W. Christener. "Mr. Christener can talk the talk, but he cannot walk the walk."

28. Karen Emery, in March 2004, was employed by SCAN. The Department of Child Services made a referral to SCAN for in home services. Ms. Emery provided those services from March 2004 until April 2006 when she left for other employment.

29. Ms. Emery provided education to Steven W. Christener and Betty A. Parker. She instructed the two regarding Discipline Techniques Often times Steven W. Christener would exhibit rigidity and frustration when attempting to care for [M.C.] and his new born son [S.C.]. On a number of occasions Ms. Emery was aware that Steven W. Christener and Betty A. Parker violated the Court's no contact order.

30. Ms. Emery also observed that Steven W. Christener was very controlling during supervised visits with [M.C.] and [S.C.]. Mr. Christener did not take redirection well and was inconsistent with discipline of the

children. Steven W. Christener was simply unable to understand the cues being given by the children. Ms. Emery opined that “[M.C.] would be another [D.C.] situation.”

31. Dr. Scott Lee, PhD., began working with Steven W. Christener through referral by the Department of Child Services for substance abuse counseling. Dr. Lee treated Steven W. Christener for anger management.

32. Dr. Lee defined anti-social personality disorder as one who has difficulty relating to others. Those with the disorder do not experience guilt or remorse for other people. They may abuse other people and will not have a second thought about hurting other people. Those with the disorder may also have repeated criminal involvement. Dr. Lee did not diagnose Steven W. Christener with anti-social personality disorder, but stated some of the test results given to him by Mr. Christener indicated features and traits of the disorder.

33. Dr. Lee opined that Steven W. Christener had difficulty coping with daily stressors. He opined that Mr. Christener was “motivated” but could not follow through.

34. Beth Webber is the Court appointed Guardian Ad Litem for [M.C.]. Ms. Webber stated that the brutality and torture of [D.C.] and the injuries he received were the worst she had ever seen.

35. Ms. Webber stated that reactive attachment disorder is not the result of the occurrence of one event. Steven W. Christener lived with [D.C.] for nine (9) to eleven (11) months prior to the child’s abuse. Ms. Webber expressed concerns with Mr. Christener’s inability to make any progress over the two and a half (2 1/2) years of services provided to Mr. Christener. Ms. Webber also expressed serious concerns regarding Steven W. Christener’s controlling behavior. “He had qualified people helping and he wouldn’t make the changes.”

36. Ms. Webber observed the visits between Mr. Christener and his children. She observed that he could intellectualize the instructions but he could not put it into practice three (3) hours a week. Ms. Webber recalls Mr. Christener’s request to shorten visits.

37. Ms. Webber observed that as of the date of trial, even after being found guilty of beating [D.C.], Steven W. Christener still refuses to accept responsibility for what happened to the child. “Mr. Christener attempts to minimize what happened to the child and blame others”. [sic] Mr. Christener’s ability to change is small. Mr. Christener’s earliest possible release will be nine (9) years. The child needs a permanent plan for her immediate future.

38. Ms. Webber has observed [M.C.] in licensed foster care. She is lively and independent. The child has bonded well and the foster parents have indicated a desire to adopt her and her brother, [S.C.].

39. Ms. Webber opined it would be in the best interests of [M.C.] and

[S.C.] if Steven W. Christener's parental rights were terminated.

40. Ms. Webber opined that the risk of [M.C.] being exposed to the same brutal treatment as [D.C.] had not been alleviated despite two and one-half years of services to Steven W. Christener.

41. Ms. Webber observed that the Department of Child Services' plan of adoption for the child was a satisfactory plan for the care and treatment of the child.

CONCLUSIONS OF LAW

* * * * *

44. Steven W. Christener has demonstrated an inability to adequately meet the basic needs of his children.

45. Steven W. Christener has demonstrated a pattern of inability to benefit from in home services.

46. Steven W. Christener has demonstrated a pattern of inability to adequately parent his children.

47. Steven W. Christener is currently incarcerated for twenty (20) years at the Indiana Department of Correction.

48. There is a reasonable probability because Steven W. Christener has demonstrated an inability to benefit from services as well as demonstrated a pattern of no parenting skills that the conditions that resulted in the child's removal from the home have not been, or will be remedied.

49. Steven W. Christener suffers from several mental health problems which collectively impair his ability to adequately parent normal children.

50. Steven W. Christener has a history of violent and/or threatening behavior to himself as well as those around him.

51. Steven W. Christener has demonstrated a long pattern of an inability to interact socially and, therefore, an inability to adequately parent these two (2) children.

52. There is a reasonable probability that the continuation of the parent-child relationship between Steven W. Christener and his child poses a threat to her well being.

53. Termination of the parent-child relationship between the child's father, Steven W. Christener, is in the best interest of the child.

54. The Department of Child Services' plan of adoption for the children is a satisfactory plan of care and treatment for the child.

(Supplemental Appendix at 3-7.)

DISCUSSION AND DECISION

1. Admission of Evidence

Christener first argues the court abused its discretion when it excluded testimony from his sister about her willingness to house the children until his release from prison. Trial courts have broad discretion to rule on the admission or exclusion of evidence, and we review their decisions only for an abuse of discretion. *In re A.H.*, 832 N.E.2d 563, 567 (Ind. Ct. App. 2005). An abuse of discretion occurs if the court's decision was clearly against the logic and effect of the facts and circumstances before the court. *Id.* Moreover, we will not reverse a court's decision to exclude evidence unless a "substantial right of the party is affected." Ind. Evidence Rule 103.

Christener claims the evidence was relevant. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid. R. 401. Generally speaking, relevant evidence is admissible, while irrelevant evidence is inadmissible. Evid. R. 402.

To support his relevance claim, Christener attempts to analogize his situation to that in *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied sub nom. In re A.R.*, 855 N.E.2d 1006 (Ind. 2006). Rowlett was incarcerated and his children were placed with their maternal grandmother, who was to adopt the children if Rowlett's parental rights were terminated. Rowlett requested a continuance of the termination hearing because he was to be released from prison in six weeks. The court denied the request and terminated his parental rights.

A panel of this court reversed, noting delaying the hearing “would have had little immediate effect upon the children” because, either way, they would remain with the grandmother. *Id.* at 619. In addition, we noted a number of changes in Rowlett’s circumstances that might make him an appropriate parent once released from prison. Rowlett had spent his time in prison living in a “therapeutic community,” where he “had participated in nearly 1,100 hours of individual and group services” dealing with anger management, parenting skills, domestic violence, self-esteem, and substance abuse. *Id.* at 622. Rowlett had not used drugs while in prison, and he planned to continue counseling and other services to remain free of drugs once released from prison. Rowlett had completed college courses through Ball State while in prison and intended to continue his education. Rowlett had secured employment with a construction company, and he was going to live with his aunt, who was already having regular visits with his children on the weekends. Rowlett and his children maintained contact, and were attached to each other.

Rowlett does not lead us to believe this trial court abused its discretion. Christener’s release is nine years, not six weeks, away. Rowlett had not received any services from DCS because he was imprisoned, but multiple service providers testified Christener failed to benefit from the services he received from DCS prior to imprisonment. Rowlett was imprisoned for drug crimes, while Christener abused a child that lived with him. Rowlett’s children were living with their maternal grandmother, who was to adopt them if Rowlett’s rights were terminated, but who might continue to have contact with the children if they were returned to Rowlett. Christener’s children were placed with non-relative foster parents who were waiting to adopt the children, but who

would not see them if they were returned to Christener. The only possible family-placement Christener could identify was his sister, whose household was determined to be inappropriate for M.C. and S.C.⁴ For all these reasons, Christener cannot find refuge in *Rowlett*.

Because her home had already been evaluated and found to be an inappropriate placement for M.C. and S.C., the court did not abuse its discretion at the final hearing when it excluded as irrelevant testimony regarding the willingness of Christener's sister to house the children.

2. Sufficiency of Evidence

When a parent appeals the termination of his parental rights, we will not reverse the trial court's judgment unless it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). When determining whether the evidence supports the findings and judgment, we may not reweigh the evidence or reassess the credibility of the witnesses. *Id.* We will set aside the trial court's findings only if they are clearly erroneous; that is, if the record lacks any evidence or reasonable inferences to support them. *Id.* We consider only the evidence and reasonable inferences therefrom that support the judgment. *In re D.G.*, 702 N.E.2d at 780.

A trial court may not terminate a parent's rights unless the State demonstrates by clear and convincing evidence "there is a reasonable probability that: (i) the conditions

⁴ Catholic Charities determined the home was inappropriate because the family failed to complete the required paperwork, someone in the household had a criminal history, and the space in the house was inadequate for two additional children. DCS's review of its files uncovered files on the Christener family, including one in which Christener's sister reported being physically and sexually abused by her father and brothers, and in which she admitted physically abusing children she baby-sat when she was a teenager.

that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child.”⁵ Ind. Code § 31-35-2-4(b); *see also In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002) (noting State's burden of proof).

To determine whether there is a reasonable probability the conditions justifying a child's continued placement outside the home will not be remedied, “the trial court must judge a parent's fitness to care for her children at the time of the termination and take into consideration evidence of changed conditions.” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). Nevertheless, the trial court must also “evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Id.* The court may consider the parent's response to services offered by an Office of Family and Children when determining whether conditions have changed. *See M.B. v. Delaware Cty. Dept. of Welfare*, 570 N.E.2d 78, 82 (Ind. Ct. App. 1991).

The pictures of the injuries Christener and Parker inflicted on D.C. are gut-wrenching and heart-breaking. We find even more disturbing the notion that D.C.'s injuries were inflicted not in a momentary lapse of parenting judgment, but over a seven-hour time-span, as a boy not even three years old was forced to exercise or be beaten.

⁵ The court concluded the evidence supported all three. Because the statute was written in the alternative, the State needed to prove only one. Therefore, when the evidence supports one of the trial court's conclusions, we need not determine whether the evidence supports the remaining portions of the statute. *See In re J.W.*, 779 N.E.2d 954, 962 (Ind. Ct. App. 2002) (because Ind. Code § 31-35-2-4(b)(2)(B) is written in the alternative, we need not address evidence supporting the trial court's finding threat to child because evidence supported court finding reasons for removal would not be remedied), *trans. denied sub nom. Weldishofer v. Dearborn County Div. of Family & Children*, 792 N.E.2d 40 (Ind. 2003).

This torture occurred after Christener had already received eleven months of assistance with parenting skills and discipline techniques from Healthy Families. That Christener had the presence-of-mind that night to realize the flyswatter was leaving marks on D.C. suggests Christener could have chosen to stop hitting D.C., but instead he decided to switch to using a wooden shelf as a paddle. Sylvia Bleeke, the Family Case Manager for DCS, testified the bruising on D.C.'s buttocks was so severe it damaged his muscles.

In addition to the crimes against D.C., Christener's criminal history includes battery, operating a vehicle while intoxicated, burglary, theft, and probation violations. Dr. John Musgrave, a licensed clinical psychologist, evaluated Christener and opined that he has severe substance abuse issues and has a probable diagnosis of anti-social personality disorder.⁶

Kristine Ottaviano Shestak, a licensed mental health counselor, began counseling D.C. in August of 2004, at the request of his Guardian Ad Litem, to help facilitate his reunification with Parker. Shestak noted D.C. displayed behaviors indicative of both reactive attachment disorder⁷ and post-traumatic stress disorder ("PTSD").⁸ She noted he had no bruises on his hands in the pictures taken of him in the hospital on March 9, 2004, and she opined he had no bruises because he did not try to defend himself from the abuse.

⁶ Dr. Musgrave explained anti-social personality disorder is "when you done [sic] care for the rights of others. You break laws with no regard of right or wrong." (Tr. at 41.)

⁷ Shestak described reactive attachment disorder as "a persistent inability to contact [sic] to adults" that results from "grossly pathological care" from adults. (Tr. at 58.) D.C. displayed numerous behaviors consistent with that disorder, including "lack of eye contact, the manipulation, the lack of true emotional connection, [and] the out burst [sic] when frustrated." (*Id.*)

⁸ PTSD is "a reaction to a major trauma" that arises when a person experiences or witnesses a life-threatening incident that he is unable to control. (Tr. at 58.)

When Shestak watched Christener interacting with M.C., she noted he used an authoritarian parenting style. Authoritarian parents are less concerned about the child's interests than their own interests, and they use coercion, including physical coercion, to obtain a child's compliance. Christener expected his daughter to speak at a level that was inappropriate for her age and developmental level, and he would withhold crayons because she could not speak as he expected. He insisted on taking M.C. to a party he had planned with extended family even though she was very ill, and she ended up in the hospital with a high fever and croup. This suggested to Shestak that Christener was incapable of "tuning into what the child is telling" him. (Tr. at 65.)

Shestak's conclusion was Christener's parental rights should be terminated because: "Christener presence [sic] a high risk to a child that he has little ability to understand the need to respect the rights of others. That he takes no responsibility for the things that he has done and that he justifies his behavior because its something that he did." (*Id.* at 73.) The Guardian Ad Litem, Beth Webber, agreed Christener's rights should be terminated because in the fourteen months before Christener was incarcerated, his improvement was "really tiny baby steps and not . . . the sweeping changes that need to be made." (*Id.* at 257.)

Karen Emery, while employed at SCAN in Fort Wayne, worked with Christener on parenting skills from March 2004 to April 2005. They watched videos and discussed discipline techniques, discussed age appropriate activities for children, and discussed expectations for children during different developmental stages. In addition, she supervised his visits with M.C. and S.C. She agreed his parenting was "controlling"

because he could not allow M.C. to play as she wished. (*Id.* at 115.) He would become frustrated if M.C. would not do or say what he wanted, even if his expectations were inappropriate for her age. He was “rigid” about keeping M.C. clean as she was eating, even though she was only eighteen months old. (*Id.* at 116.) After six months of therapy, he was unable “to respect when [M.C.] said no.” (*Id.*) When asked to describe the visits in March 2005, after one year of assistance with parenting skills, Emery summarized those visits as follows:

During that time, again, there seemed to be an increased level of frustration, would not follow through with time outs. Some of the examples, wouldn't listen or follow [M.C.'s] cues. One of the times, Steve brought a clip on earrings and stickers and that type of stuff and was showing what, [M.C.] wanted to know that the earrings were and he showed her what they were by putting them on his ears and then put them on her ears, got her to put them on her ears and she started crying because they were pinching her and when I went in and redirected. He said they didn't hurt him so he didn't see why they would hurt her. Again, one time he told [M.C.] to clean up, there wasn't follow through when she ignored him, at one time smacked him and he didn't redirect her of [sic] not to smack him. Also, she was wanting some more Skittles that Betty had brought to the visits and I told, went in and told them not to because she had choked on them. Well, then he asked for [M.C.] to give them back to him and she refused and instead of going to get them, he continued to ask for them and she got mad and threw them across the floor so there's Skittles all over the floor. Teased her about not getting a book that she wanted, just that, she was tantruming [sic] and fussing during a diaper change. At that point, she was so frustrated and she tried to get away from him and he grabbed her upper leg and flipped her resulting in a bruise on the right side of her face and a bruise on her left elbow which I then had to ask . . . one of the DCS workers, to take pictures.

(*Id.* at 120-21.) In summary, Emery stated, “I believe he intellectually learned things but applying them, he did not apply them consistently.” (*Id.* at 123.)

Even Christener's witness, Dr. Scott Lee, a psychologist at Park Center, could not confidently answer whether, with adequate therapy or medication, Christener would ever

be able to resolve his problems. Christener intimidated Dr. Lee once by yelling at him during a group therapy session. Dr. Lee believes Christener has difficulty with “emotional regulation,” (*id.* at 143), such that he was unable to control sadness, anger, happiness, or any extreme emotion.

That evidence overwhelmingly supports the trial court finding the reasons for the children’s removal had not been remedied and in all probability would not be remedied. In light of the facts that Christener’s earliest release date was nine years away and that there was no guarantee he would ever obtain sufficient skills to make him a safe parent, the court did not err when it found termination of Christener’s parental rights was in the best interests of the children.

For all these reasons, we affirm the judgment of the trial court.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.